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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

No. 501.

WATERMAN STEAMSHIP CORPORATION,

Petitioner,

v.

THE UNITED STATES,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS.

PETITIONER'S REPLY.

Petitioner submits this Reply to set forth its position regarding the recent decision of the Court of Appeals, Second Circuit, in the *Prudential Steamship Corporation* v. *United States* and *States Marine Corporation* v. *United States*, decided together, February 24, 1955. The decision is printed in the Appendix to the Brief in Opposition.

Writ of Certiorari is sought here because of the importance of the question whether the Court of Claims has lost jurisdiction in the whole field of maritime contracts and not alone because of conflict between the Court of Appeals, Second Circuit, and the Court of Claims.

Whether the Court of Appeals, Second Circuit, has now overturned its previous decisions[1] and removed all conflict with the Court of Claims may still be open to question. At least, appellee in the *States Marine* case has petitioned

[1] *The Everett Fowler*, 151 F. 2d 662, certiorari denied, 327 U. S. 804, and *C. F. Harms Co.* v. *Erie R. Co., et al.*, 167 F. 2d 562.

the Court to re-consider its decision because of the uncertain manner in which it dealt with its previous decisions. Also, in replying to the Petition for Re-hearing, the United States has requested the Court to clarify its position in that regard.

In any event the Court of Appeals' decision has not detracted from the importance of the question. Neither has it put to rest the perplexing questions involving the scope of the Suits in Admiralty Act nor finally fixed the boundaries between jurisdiction under that Act and jurisdiction under the Tucker Act.

While it was held in *Johnson* v. *Fleet Corporation*, 280 U. S. 320, that the Suits in Admiralty Act granted to the District Courts exclusive jurisdiction in Admiralty of suits involving a Government owned or operated vessel, it has never been held previously by an Appellate Court that the Act applies where the vessel involved was privately owned and operated. On the other hand, *Alcoa Steamship Company* v. *United States*, 338 U. S. 421, stands as authority casting doubt on all decisions holding that Tucker Act jurisdiction has been ousted by the Suits in Admiralty Act where the vessel involved is privately owned and operated.[2] In addition the language of Section 2 of the Suits in Admiralty Act: "provided such vessel is employed, etc." remains unexplained. Literally read this is the *sine qua non* for all libels authorized by the Act. Because of it the Act can apply only to suits involving "such" vessels which, of course, are vessels owned or operated by the United States.

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[2] The *Alcoa* case involved Government cargo but a privately owned and operated vessel. This Court said: "Petitioner instituted this suit under the Tucker Act in the United States District Court for the Southern District of New York to recover freight claimed." The record showed that the question of jurisdiction was sharply contested below. Hence on the principle of *Chicago* v. *Willard*, 220 U. S. 413, 419 and *Mansfield* v. *Swan*, 111 U. S. 379, 382, this Court at least impliedly held that Tucker Act jurisdiction was proper.

Cargo is not something unconnected with a vessel and cannot be so considered. The Suits in Admiralty Act deals with particular vessels, i. e., those owned or operated by or for the United States. Insofar as it deals with cargo it is clear from the Act that it refers to cargo carried on such vessels and not cargo in the abstract. Otherwise, the phrase "provided such vessel is employed, etc." has no meaning in connection with a libel involving Government cargo.

The argument that in referring to "cargo" Congress intended to nullify the *Davis*, 10 Wall 15 (1869), is without support and is not impressive. If that case had been of any concern it is surprising, that Congress did nothing about it during the half century from 1869 to 1920.

In the Brief in Opposition Government counsel say "there may be some area left in which there may be difficulty in the demarcation of remedies under the Tucker Act and the Suits in Admiralty Act". Likewise this Court has stated that the Act is not to be construed as an all-inclusive grant of jurisdiction to the District Courts. *Calmar Steamship Corporation* v. *United States*, 345 U. S. 446 (footnote 8).

Hence it is still far from clear where the boundaries are between Tucker Act and Suits in Admiralty Act jurisdiction and where this Court will ultimately draw them. The problem is of paramount importance because it runs through the whole field of maritime contracts with the United States. Its importance is further emphasized by another aspect of the matter dealt with in No. 502, *Waterman Steamship Corporation* v. *United States*.

Until this Court has spoken, the question presented will continue to vex litigants and the Courts and for the reasons stated above and in the Petition it should be settled by this Court.

Dated: New York, March 15th, 1955.

Respectfully submitted,

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